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ATTORNEYS FOR USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 USA CAPITAL REALTY ADVISORS, LLC,
 USA CAPITAL DIVERSIFIED TRUST DEED FUND,
 LLC,
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 USA SECURITIES, LLC,
 Debtors

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter Number: 11

Jointly Administered Under
 Case No. BK-S-06-10725 LBR

Affects:

- ☐ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

**USA CAPITAL DIVERSIFIED
 TRUST DEED FUND, LLC'S
 ELEVENTH REPORT OF
 ACTION TAKEN AND
 PROGRESS TOWARDS
 CONSUMMATION OF
 CONFIRMED PLAN OF
 REORGANIZATION**

**POST-EFFECTIVE DATE USA CAPITAL DIVERSIFIED TRUST
 DEED FUND, LLC'S ELEVENTH REPORT OF ACTION TAKEN AND PROGRESS
 TOWARDS CONSUMMATION OF CONFIRMED PLAN OF REORGANIZATION**

Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC ("Diversified" or
 "Revested Debtor"), a revested debtor in the above-captioned chapter 11 cases (the "Chapter 11
 Cases"), by and through its counsel noted above, hereby submits this Eleventh Report of Action
 Taken and Progress Towards Consummation of Confirmed Plan of Reorganization (the
 "Eleventh Report"), pursuant to the Court's "Order Confirming the "Debtors' Third Amended

1 Joint Chapter 11 Plan of Reorganization,' as Modified Herein" [Docket No. 2376] (the
2 "Confirmation Order") entered January 8, 2007. *See* Confirmation Order, ¶ 74. The Debtors'
3 Third Amended Joint Chapter 11 Plan of Reorganization (the "Plan") went effective on March
4 12, 2007 (the "Effective Date").

5 This Eleventh Report is for the period from February 1, 2010 – July 1, 2010.¹ This
6 Eleventh Report incorporates the requirements and structure of former Rule 3020(a) of the
7 Court's Local Rules of Bankruptcy Practice, abrogated in May 2006, which were as follows:

8 **(A) A schedule of personal property costing more than \$5,000 and any real**
9 **property acquired, sold or disposed of and the price paid for each:**

10 Personal property costing more than \$5,000:	None
11 Real property acquired, sold or disposed of:	None
12 Total:	\$0.00

13 **(B) A schedule listing each debt, the total amount required to be paid under the**
14 **Plan, the amount required to be paid to date, the amount actually paid to date, and the**
15 **amount unpaid:**

16 Due to the nature of its operations as an investment fund with contracted services
17 through intercompany debtor entities and no employees, Diversified had only a relatively
18 small number of claims filed against it in the Chapter 11 Cases. Such claims included
19 general unsecured claims (many of which were misfiled as creditor claims by holders of
20 equity interests in Diversified) and administrative expense claims related to professional
21 fees accrued during the Chapter 11 Cases. All unsecured creditors and administrative
22 expense claims have been paid in full.

23 **(C) A schedule of executory contracts entered into:**

24 Pursuant to the Plan, Diversified entered into agreements, as of March 13, 2007,
25 retaining professionals to provide legal and financial advisory services necessary to
26 conduct Diversified's affairs. Since March 13, 2007, Diversified has retained additional
27

28 ¹ This report thus covers five (5) months, rather than three (3) months.

professionals. The agreements with those professionals are detailed in previous reports filed with the Court.

(D) A statement listing each postpetition tax (i.e., income, payroll, property, sales), payee, and the amount actually paid:

Federal Unemployment taxes:	None
Federal Payroll taxes:	None
Nevada Unemployment taxes:	None
Total:	\$0.00

(E) Progress toward completion of the Plan and a list and status of any pending adversary proceedings or motions and resolutions expected:

1. General Progress

The major terms of the Plan with respect to Diversified have all been accomplished. The Operating Agreement of Diversified has been amended, USA Capital First Trust Deed Fund, LLC has made certain payments and assignments to Diversified, and Diversified is operating in the post-confirmation realm.

Diversified continues to focus on recovering assets and the investigation and prosecution of causes of action against potential recovery targets. On March 3, 2010, Diversified sent a letter to its investors with a recommendation that the investors consult with their tax advisors regarding filing a 2006 protective claim and the filing of 2009 tax returns. A copy of the March 3, 2010 letter is attached as Exhibit 1. While the letter does not provide tax advice, it provides helpful information to investors.

2. Nondischargeability Complaint – In re Thomas A. Hantges

On February 11, 2008, Diversified filed a nondischargeability complaint (the “Hantges Dischargeability Complaint”) in the Thomas A. Hantges bankruptcy proceeding. [Docket No. 527 in Bankruptcy Case No. 07-13163; Adversary Case No. 08-01041]. The Hantges Dischargeability Complaint alleges that Mr. Hantges’ debts to Diversified should not be discharged under 11 U.S.C. § 523 because Mr. Hantges (1) obtained money and property from Diversified through false pretenses, false

1 representations, and/or actual fraud, (2) Mr. Hantges misappropriated Diversified's
 2 money and property while acting in a fiduciary capacity towards Diversified, and (3)
 3 Mr. Hantges obtained Diversified's money and property by means of willful and
 4 malicious injury and/or reckless disregard to Diversified. The Hantges Dischargeability
 5 Complaint seeks a determination that all of Mr. Hantges' debts to Diversified are non-
 6 dischargeable, and a judgment for Diversified in an amount not less than \$149,555,735.

7 On October 24, 2008, the Court entered an *Order Approving Oral Stipulation to*
 8 *Stay Discovery Pending Further Order of the Court* [Docket No. 21], which stayed
 9 discovery pending either 1) the filing of a chapter 11 plan providing for discharge of
 10 Mr. Hantges or 2) the conversion of the chapter 11 case to a chapter 7 bankruptcy. Mr.
 11 Hantges bankruptcy case has since been converted to chapter 7, and the new deadline to
 12 object to his discharge has passed.

13 On July 13, 2010, the Court ordered all of the plaintiffs with 11 U.S.C. § 523
 14 claims against Mr. Hantges, including Diversified, to participate in an October 21, 2010
 15 settlement conference. If a settlement agreement is not reached, then the Court will set a
 16 trial date, the stay will terminate, and discovery will commence in Diversified's action
 17 against Mr. Hantges.

18 **3. Nondischargeability Complaint – In re Joseph D. Milanowski**

19 On March 28, 2008, Diversified filed a nondischargeability complaint (the
 20 "Milanowski Dischargeability Complaint") in the Joseph D. Milanowski bankruptcy
 21 proceeding. [Docket No. 416 in Bankruptcy Case No. 07-13162; Adversary Case No.
 22 08-01090]. The Milanowski Dischargeability Complaint alleges that Mr. Milanowski's
 23 debts to Diversified should not be discharged under 11 U.S.C. § 523 because
 24 Mr. Milanowski (1) obtained money and property from Diversified through false
 25 pretenses, false representations, and/or actual fraud, (2) Mr. Milanowski misappropriated
 26 Diversified's money and property while acting in a fiduciary capacity towards
 27 Diversified, and (3) Mr. Milanowski obtained Diversified's money and property by
 28 means of willful and malicious injury and/or reckless disregard to Diversified. The

1 Milanowski Dischargeability Complaint seeks a determination that all of
2 Mr. Milanowski's debts to Diversified are non-dischargeable, and a judgment for
3 Diversified in an amount not less than \$149,555,735. Mr. Milanowski filed an Answer
4 [Docket No. 7 in Adversary Case No. 08-01090] on June 30, 2008.

5 On September 30, 2008, Diversified and Mr. Milanowski appeared for a
6 Scheduling Conference before the Court, and the Court agreed to stay the adversary
7 proceeding pending certain developments in Mr. Milanowski's underlying bankruptcy
8 case. Since then, Mr. Milanowski's bankruptcy case was converted to chapter 7, and the
9 United States Trustee filed a complaint objecting to his discharge pursuant to 11 U.S.C. §
10 727. *See* Complaint [Docket No. 668 in Bankruptcy Case No. 07-13162]. Various
11 private plaintiffs, referred to by shorthand as the "Kehls," also added a Section 727 claim
12 to their objection to Mr. Milanowski's discharge. *See* Amended Complaint [Docket No.
13 657 in Bankruptcy Case No. 07-13162].

14 During a July 13, 2010 status check, the Court set a settlement conference for the
15 plaintiffs with 11 U.S.C. § 727 claims against Mr. Milanowski, and for the USACM
16 Liquidating Trust for October 22, 2010. The Milanowski Dischargeability Complaint is
17 set for a status check on November 17, 2010, at the same time as the Scheduling
18 Conference for the United States Trustee's Section 727 action against Mr. Milanowski.
19 If the parties have not reached a settlement agreement by that time, the Court will set a
20 trial date, the stay will terminate, and discovery will commence in Diversified's action
21 against Mr. Milanowski.

22 **5. Status of Complaints Filed**

23 Diversified and USACM have filed a number of complaints to recover assets
24 through their litigation counsel, Diamond McCarthy LLP. Diversified's past progress
25 reports have detailed the status of concluded litigation and settlement recoveries prior to
26 the time period encompassed by this Eleventh Report. The following cases are still
27 active or were settled subsequent to the last report:
28

- 1 • *USACM Liquidating Trust v. Deloitte & Touche, LLP and Victoria Loob (Case*
2 *No. 08-00461)*: This Complaint was filed in United States District Court, District
3 of Nevada, on April 11, 2008. Discovery closed January 30, 2009 [Docket No.
4 83]. On April 26, 2010, Defendant Deloitte & Touche LLP filed a Motion for
5 Summary Judgment (Imputation, In Pari Delicto, and Statute of Limitations)
[Docket No. 97]. The dispositive motion deadline was June 4, 2010 [Docket No.
6 92]. Defendant Deloitte & Touche, LLP filed a Motion for Summary Judgment
7 [Docket No. 111] on June 4, 2010, and the court has not yet ruled on that motion.
- 8 • *USA Capital Diversified Trust Deed Fund LLC v. Stanley E. Fulton (Adversary*
9 *Case No. 08-01132)*: This Complaint was filed as an adversary proceeding in
10 Jointly Administered Bankruptcy Case No. 06-10725 on April 11, 2008, and
11 transferred to the District Court because defendant requested a jury trial on
12 October 18, 2009. On December 11, 2009, the Court entered its Findings of
13 Facts, Conclusions of Law and Recommendations Regarding (1) Defendant's
14 Motion for Summary Judgment; 2) Plaintiff's Motion for Partial Summary
15 Judgment; and 3) Defendant's Countermotion for Summary Judgment [Docket
16 No. 149]. On January 26, 2010, the District Court set the jury trial on this case
for the stacked calendar of June 21, 2010 [Docket No. 11]. On May 7, 2010, the
District Court ordered that the Court's December 11, 2009 Findings and
Recommendations were accepted and adopted [Docket No. 26].
- 17 • *USAC Liquidating Trust and USA Capital Diversified Trust Deed Fund, LLC v.*
18 *Mary Petersen, individually and as Trustee of the Mary Petersen Family Trust*
Dtd 8/12/98; Michael Petersen individually and as Trustee of the Michael D.
Petersen Family Trust Dtd 8/12/98; Kathryn Petersen individually and as Trustee
of the Kathryn L. Petersen Living Trust and the KLP Trust Dtd 7/15/99
(Adversary Case No. 08-01134). The parties filed a Stipulation to dismiss the
case with prejudice [Docket No. 144] on December 29, 2009. The adversary
proceeding was closed on March 16, 2010 [Docket No. 145].
- 19 • *USA Capital Diversified Trust Deed Fund, LLC v. Wells Fargo Bank, N.A.*
20 *(Adversary Case No. 08-01135)*: Trial in this case is set for August 2, 2010
[Docket No. 353].

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1 (F) A statement regarding the status of payment of UST quarterly fees:

2 All UST fees have been paid in full through July 1, 2010, the final date covered
3 by this Eleventh Report.

4 Dated this 10th day of January, 2011.

5 SNELL & WILMER L.L.P.

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7 By: /s/ Claire Y. Dossier

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